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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/826,369	04/05/2001	Wolfgang Schulz	SCHULZ 2	4003

1444 7590 07/14/2004

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WASHINGTON, DC 20001-5303

EXAMINER

PIZIALI, ANDREW T

ART UNIT PAPER NUMBER

1771

DATE MAILED: 07/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/826,369	SCHULZ, WOLFGANG	
	<b>Examiner</b>	<b>Art Unit</b>	
	Andrew T Piziali	1771	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 March 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,4-6 and 11-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-6 and 11-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/1/2003</u> . | 6) <input type="checkbox"/> Other: _____  |

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**DETAILED ACTION**

***Response to Amendment***

1. In view of the appeal brief filed on 3/2/2004, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.
2. To avoid abandonment of the application, appellant must exercise one of the following two options:
  - (1) file a reply under 37 CFR 1.111 or,
  - (2) request reinstatement of the appeal.
3. If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
5. Claims 1-2, 6 and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 4,052,521 to Ferrari in view of USPN 2,757,064 to Speck, USPN 3,203,751 to Hildreth, or USPN 3,390,947 to Shown et al. (hereinafter referred to as Shown).

Regarding claims 1-2, 6 and 11-12, Ferrari discloses a woven awning fabric comprising substantially entirely a polyester continuous filament yarn (see entire document including column 5, lines 40-43 and column 4, lines 40-59). Ferrari discloses that the fabric may be later

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coated on one side with a coating material of polyvinyl chloride resin (column 4, lines 40-59), but the other side is not to be coated and therefore would be visible. Speck (see entire document including column 1, lines 15-18 and lines 45-59 and the Examples), Hildreth (see entire document including column 1, lines 16-60 and column 2, lines 3-16), and Shown (see entire document including columns 1, lines 14-26 and column 3, line 73 through column 4, line 51) each disclose a process of wet-dyeing polyester with an anthraquinone-based disperse dye. It would have been obvious to one having ordinary skill in the art at the time the invention was made to wet-dye the polyester fabric of Ferrari with any of the processes disclosed by Speck, Hildreth, or Show, because the dye would provide the awning fabric with a desired color having good fastness properties.

Regarding claim 2, Ferrari discloses that the fabric may have a weight per unit area of about 70 to 350 g/sqm (column 4, lines 40-59).

Regarding claim 6, Ferrari does not mention the shape of the yarn, but considering that yarns conventionally have round cross sections and considering that Ferrari fails to teach or suggest an unconventional yarn shape, it appears that the yarn of Ferrari possesses a round cross section.

Regarding claims 11-12, any awning may be used as a sun room awning, therefore, the awning disclosed by Ferrari may be a sun room awning.

6. Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 4,052,521 to Ferrari in view of USPN 2,757,064 to Speck, USPN 3,203,751 to Hildreth, or USPN 3,390,947 to Shown as applied to claims 1-2, 6 and 11-12 above, and further in view of JP Publication No. 06-192972 to Uchida et al. (hereinafter referred to as Uchida).

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Ferrari does not mention the use of a UV block, but Uchida discloses that a triazine-derivative based UV block may be applied to dyed polyester to improve the light fastness of the dyed polyester (see entire document). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a triazine-derivative based UV block to the awning fabric of Ferrari, as taught by Uchida, because the UV block would improve the light fastness of the dyed polyester.

7. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 4,052,521 to Ferrari in view of USPN 2,757,064 to Speck, USPN 3,203,751 to Hildreth, or USPN 3,390,947 to Shown in view of JP Publication No. 06-192972 to Uchida as applied to claims 4-5 above, and further in view of USPN 5,103,874 to Lee.

Ferrari does not mention the shape of the yarn, but Lee discloses that yarns conventionally have round cross sections (column 1, lines 56-64). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the yarns of Ferrari round, as taught by Lee, because round polyester yarns are conventionally used and provide structural support and stability.

8. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 4,052,521 to Ferrari in view of USPN 2,757,064 to Speck, USPN 3,203,751 to Hildreth, or USPN 3,390,947 to Shown as applied to claims 1-2, 6 and 11-12 above, and further in view of USPN 4,719,954 to Curtis et al. (hereinafter referred to as Curtis).

Ferrari does not mention articulated arms, but Curtis discloses that it is known in the art to construct an awning with articulated arms (see entire document including Figure 1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to

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provide articulated arms to the awning of Ferrari, because such a modification would have been motivated by the desire to improve the functionality of the awning.

9. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 4,052,521 to Ferrari in view of USPN 2,757,064 to Speck, USPN 3,203,751 to Hildreth, or USPN 3,390,947 to Shown as applied to claims 1-2, 6 and 11-12 above, and further in view of USPN 5,103,874 to Lee.

Ferrari does not mention the shape of the yarn, but Lee discloses that yarns conventionally have round cross sections (column 1, lines 56-64). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the yarns of Ferrari round, as taught by Lee, because round polyester yarns are conventionally used and provide structural support and stability.

Ferrari does not mention any delustrants or lubricants, therefore, it appears that the awning fabric contains an amount of zero delustrants and lubricants.

With respect to the claimed warp rate and weft density, it would have been obvious to one having ordinary skill in the art at the time the invention was made to alter the weaving properties of the fabric because it is understood by one of ordinary skill in the art that the warp rate and weft density determine the desired properties of the awning, such as feel, and because it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

10. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 4,052,521 to Ferrari in view of USPN 2,757,064 to Speck, USPN 3,203,751 to Hildreth, or USPN

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3,390,947 to Shown in view of USPN 5,103,874 to Lee as applied to claim 13 above, and further in view of JP Publication No. 06-192972 to Uchida.

Ferrari does not mention the use of a UV block, but Uchida discloses that a triazine-derivative based UV block may be applied to dyed polyester to improve the light fastness of the dyed polyester (see entire document). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a UV block to the to the awning fabric of Ferrari, as taught by Uchida, because the UV block would improve the light fastness of the dyed polyester.

11. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 4,052,521 to Ferrari in view of USPN 2,757,064 to Speck, USPN 3,203,751 to Hildreth, or USPN 3,390,947 to Shown as applied to claims 1-2, 6 and 11-12 above, and further in view of USPN 5,103,874 to Lee in view of USPN 5,652,057 to Delker.

Ferrari does not mention the shape of the yarn, but Lee discloses that yarns conventionally have round cross sections (column 1, lines 56-64). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the yarns of Ferrari round, as taught by Lee, because round polyester yarns are conventionally used and provide structural support and stability.

Ferrari does not mention any delustrants or lubricants, but Delker discloses that delustrants and lubricants may be added to polyester in an amount of no greater than 0.05% (see entire document including column 9, lines 35-45). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include these additives in the polyester of Ferrari, motivated by the desire to improve the properties of the polyester fabric.

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With respect to the claimed warp rate and weft density, it would have been obvious to one having ordinary skill in the art at the time the invention was made to alter the weaving properties of the fabric because it is understood by one of ordinary skill in the art that the warp rate and weft density determine the desired properties of the awning, such as feel, and because it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

12. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 4,052,521 to Ferrari in view of USPN 2,757,064 to Speck, USPN 3,203,751 to Hildreth, or USPN 3,390,947 to Shown in view of USPN 5,103,874 to Lee in view of USPN 5,652,057 to Delker as applied to claim 13 above, and further in view of JP Publication No. 06-192972 to Uchida.

Ferrari does not mention the use of a UV block, but Uchida discloses that a triazine-derivative based UV block may be applied to dyed polyester to improve the light fastness of the dyed polyester (see entire document). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a UV block to the to the awning fabric of Ferrari, as taught by Uchida, because the UV block would improve the light fastness of the dyed polyester.

### ***Response to Arguments***

13. Applicant's arguments have been considered but are moot in view of the new grounds of rejection.

### ***Conclusion***

14. The following patent is cited to further show the state of the art with respect to triazine-derivative based UV block applied to a dyed polyester:

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USPN 5,516,436 to Uchida et al. (see paragraph bridging columns 2 and 3)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew T Piziali whose telephone number is (571) 272-1541. The examiner can normally be reached on Monday-Friday (8:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

atp

*g7/B 7/21/04*  
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